IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.5096 OF 2005

Ramsumer Amarnath Chourasia).. Petitioner

Versus

Ramnath Anturam Kumbhar).. Respondent

Mr.P.S. Dani for the Petitioner.

Mr.G.R. Nadkarni for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 10TH OCTOBER 2005

P.C.:

. The Petitioner takes exception to the order passed by the trial Court dated 5th April 2005 whereby the trial Court has deleted the issue regarding jurisdiction.

2. An application had been made by the Petitioner contesting the jurisdiction of the Court to hear and decide the Suit in view of the pleadings of the Respondent. The Respondent had claimed in the Plaint that the Defendant-Petitioner was running a paan-bidi shop on the basis of a conducting licence. After this application was filed by the Petitioner to frame an issue regarding jurisdiction, both parties agreed that the issue regarding jurisdiction must be heard by the Small Causes Court. This can be observed from the order framing the issue, namely, whether this Court had

jurisdiction to entertain the Suit?. An additional issue namely, whether the Suit is filed within the period of limitation was also been framed. After framing of these issues, an application was submitted by the Respondent and by the impugned order dated 5th April 2005 the Small Causes Court deleted the issue regarding jurisdiction.

3. Mr.Dani for the Petitioner submits that the entire basis for deleting the issue regarding jurisdiction is unfounded. Furthermore, he submits that the pleadings in the present Suit did not warrant deletion of the issue of jurisdiction.

4. Mr.Nadkarni for the Respondent submits that the issue of jurisdiction has already been decided in a separate Suit filed by the Petitioner against the Respondent being R.A.D. Suit No.4702 of 1983. He submits that after the findings were recorded by the trial Court, the Appellate Court confirmed the findings and has held that the Suit was maintainable. In such circumstances, he submits that the issue of jurisdiction need not be ascertained in the present Suit because in an earlier Suit the Small Causes Court has held that the Suit filed by the Petitioner fell within the jurisdiction of the Small Causes Court. He relies on the judgment of the learned Single Judge of this Court in the case of *Fatimabai Noor Mohamed* vs. *M.Khallil Ahmed and another*,

1992 Mh.L.J. 1605.

5. In my view, the Small Causes Court has erred in deleting the issue regarding jurisdiction. It was necessary for the Small Causes Court to determine whether it had jurisdiction or not. In an earlier Suit, the Small Causes Court held it had jurisdiction to entertain the Suit filed by the Petitioner for a declaration that he was a tenant. The submission on behalf of the Respondent that the same conclusion must necessarily follow in the present Suit is without merit. It is possible that the Small Causes Court could have taken a view that it had jurisdiction to entertain the Suit, but the issue would have to be considered in the light of the pleadings on record in the present Suit. Moreover, both parties had initially agreed to the issue regarding jurisdiction being heard and decided. Even though the jurisdiction of the Small Causes Court may have been available to entertain the R.A.D. Suit based on the pleadings in that Suit, it is necessary for the Small Causes Court to consider the pleadings and then to decide whether it had jurisdiction to entertain the Suit. In my view, the Small Causes Court has, therefore, erred in deleting the issue regarding jurisdiction. However, it can always decide all the issues together including that of jurisdiction.

6. The impugned order in the Revision which has been challenged cannot be entertained since it is rightly held that the Court had no jurisdiction to entertain such a Revision.

7. The Small Causes Court will reframe the issue regarding jurisdiction and decide the same along with other issues, in accordance with law.

8. Writ Petition disposed of accordingly.